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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,464	10/03/2003	Kirk Michael Bresniker	200208654-1	3328
22879 7590 01/29/2010 HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528			EXAMINER NGUYEN, THUY-VI THI	
			ART UNIT 3689	PAPER NUMBER
			NOTIFICATION DATE 01/29/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/678,464

Applicant(s)

BRESNIKER ET AL.

Examiner

THUY-VI NGUYEN

Art Unit

3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This is in response to the applicant's communication filed on 10/05/09, wherein:
Claims 1-20 are currently pending;
Claims 1, 8, 16, have been amended;

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 8-16, 17- 20 are rejected under 35 U.S.C. 102(b) as being anticipated by O' KANE, JR. ET AL (US 6,366,919)

As for independent claim 8, O'KANE, JR. ET AL disclose a rack equipment information coordination system comprising:

a) an equipment description information repository/storage coupled with a computer,

{see figures 1, 3, database 26, 302 "*communication equipment is stored*"; see col. 3, lines 60-67; col. 5, lines 29-47}

b) a management plan information repository for tracking rack equipment management plan, and this repository/storage coupled with a computer,

{see figure 1, computer 22, and at least databases 30 and 32},

Furthermore, it appears that these limitations such as "wherein said rack equipment management plan information is used for managing rack equipment while said rack equipment is in operation and is configured for directing a change in operating characteristic of said rack equipment" in step b are also taught in O' KANE, JR. ET AL {see col. 7, lines 13-27, figures 6A " rack configuration, maintain and update" O'KANE, JR. ET AL disclose the management system for maintaining and updating/changing the rack of telecommunication equipment},

c) a coordination component [for coordinating said equipment description information and said rack equipment management plan information, said coordination component implemented by a processor of said computer which is program with instruction for performing said coordinating]

{see figure 1, col. 2, lines 14-54 discloses a computer center is connected either directly or through network such as internet to various databases. With the data stored in these data bases the installation, maintenance updating of the remote telecommunication sites, a client can access the various data bases through the network; and also see figures 1, 2, 3, 5, 10 and 11, col. 2, lines 33-40, col. 9 lines 1-27 disclose a databases of components representing various telecommunication equipment}

d) a repository management component for controls and retrieve the equipment description information and management plan information, this repository management component is couple to the computer;

{see figures 1 and 3; ,abstract; col. 2, lines 14-54; col. 4, lines 4-17; col. 7, lines 64-67; col. 8, lines 1-35 discloses the databases for storing the rack of telecommunication equipment information in the database, performance data for particular telecom equipment may be stored and

{see col. 1, lines 25-46; figures 1 and 5; col. 6, lines 15-53 discloses

Retrieves from component data database 68 the component information/equipment information such as switches, optical fiber connectors; and the central computer 22 is automatically determining and monitoring the equipment 100 in the racks 94 exceeds the maximum allowable power load on the power supplies and back up batteries 106};

Note: the system claims must be structurally distinguishable from the prior art. While features of an apparatus claim may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See MPEP 2114. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Circ. 1990). Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987).

Therefore, the phrase "*for tracking equipment description information, wherein said equipment description information comprises.....component of a rack equipment*

(step a); and for *tracking equipment management plan information....operation*(step b); *for coordinating....for performing said coordinating* (step c); *that controls automatic retrieval of said equipment description....plan information repository"* (step d) in claim 8 is considered as intended use limitation for the system/device "repository/database and component", and thus having no patentable weight.

Furthermore, the "the information/data" about "*equipment description information, identification equipment type, equipment management plan information,*" have been determined to be non-functional descriptive material (NFDM), thus having no patentable weight and does not need to be taught by the prior art since this information are just stored in the repository/database or storage. Nonfunctional descriptive material can not render nonobvious an invention that would have other wise been obvious. In re Gulack, 703 F. 2d 1381, 1385, 217 USPQ 401, 40-4 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability. See MPEP 2106.01.

As for claims 9-14 which discloses the information e.g. characteristics of rack equipment support equipment, possible operation settings of rack equipment, operating power levels and heat level, performance level information, guideline information, trigger event and management objective which are stored in the repository/database, this is taught in O'KANE, JR. ET AL., {see figures 1, 7, 11-12, col. 3, lines 60-67, col. 4, lines 1-10, col. 8-10, col. 9, lines 50-67}.

Furthermore, the "the information/data" have been determined to be non-functional descriptive material (NFDM), thus having no patentable weight and does not

need to be taught by the prior art. Nonfunctional descriptive material can not render nonobvious an invention that would have otherwise been obvious. In re Gulack, 703 F. 2d 1381, 1385, 217 USPQ 401, 40-4 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability. See MPEP 2106.01.

As for claim 15, which deal with the coordination component provides a correlation between policies associated with a particular client and rack equipment implementing the client's application, this is taught in O'KANE, JR. ET AL {see figure 13, col. 3, lines 45-47, col. 8, lines 66-67, col. 9, lines 1-28, disclose the configuration and generating the rack equipment images using the CAD application}

As for claim 16, O'KANE, JR. ET AL disclose further comprising:
a repository management component for managing information flow to and from said equipment description information repository and said management plan information repository;

{see figures 1, col. 3, lines 50-67, col. 4, lines 1-10, and lines 33-39 O'KANE, JR. ET AL disclose the management system databases for managing and maintaining the rack of telecommunication equipment and management information}

a communication link for communicating information to and from said repository management component {see figures 1, 4, network link 24, col. 3, lines 60-67}.

Note: the system claims must be structurally distinguishable from the prior art. While features of an apparatus claim may be recited either structurally or functionally,

claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See MPEP 2114. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Cir. 1990). Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987).

Also, in an apparatus claim, i.e. the phrase "for managing and for communicating" in claim 8 is considered as intended use limitation for the system/device "repository/database", and thus having no patentable weight.

As for claim 17, O'KANE, JR. ET AL disclose a computer system comprising:

a) means for controlling automatic retrieval of rack equipment related information e.g. rack equipment description information, an identification of equipment type of a rack of equipment;

{see figures 1, 5, 7, 11-13 col. 4, lines 4-9; col. 7, lines 64-67; col. 8, lines 1-35 wherein O'KANE, JR. ET AL discloses automatically *monitored* the telecommunication equipment e.g. the rack servers 94.1-94.4 which comprise communication equipment 100 such as power supply, power distribution panel, identification what racks are present at the sites and identification of equipment installed at the sites as well as in which racks; and also see figure 13 for the rack equipment description; and the central computer 22 is *automatically determining and monitoring* the equipment 100 in the

racks 94 exceeds the maximum allowable power load on the power supplies and back up batteries 106 {see col. 1, lines 25-46; figures 1 and 5; col. 6, lines 15-30, lines 40-53}.

{see col. 5, lines 34-46 wherein O'KANE, JR. ET AL discloses retrieving data or telecom component information from the databases such as 26 and 68. The telecom component information (equipment description) such as listing of the particular telecom components such as switches, optical fiber, connectors, power supplies};

b) a means for communicating rack equipment related information [for managing rack equipment while said rack equipment is in operation],

{see figures 1, 2, 5, 10 and 11, col. 3, lines 50-67, and lines 55-60 and col. 8, lines 1-10, O'KANE, JR. ET AL disclose a communication device in the *computer 22 to communicate with various databases* which stored the information related to the rack telecommunication equipment and for monitoring, determining the rack to be installed from the telecommunication cites, e.g. *equipment power requirement, performance capabilities, data relevant to racks such as sizes, and shape*}.

c) a means for storing said rack equipment related information and instructions [for implementing rack equipment information coordination]

{see figures 1, 2, 3, 5, 10 and 11, col. 3, lines 50-67, col. disclose a communication device in the *computer 22 to communicate with various databases* which stored the information related to the rack equipment, e.g. *equipment power requirement, performance capabilities, data relevant to racks such as sizes, and shape*}.

d) a means for processing information and instructions, wherein said means [for processing information and instructions is configured for processing said instructions and for managing operating characteristics of said rack equipment, and is configured for processing information for managing said rack equipment information coordination]

{see col. 1, lines 16-23, col. 39-46, col. 2, lines 33-37, and col. 2, lines 55-60; at least figures 1, 5, 6A, 10 and 11, disclose the system for managing telecommunication sites/equipment and the rack of telecommunication equipment which enable remote maintenance and reconfiguration of existing equipment

Note: that the [...] is used to indicate intended use which has no patentable weight.

Furthermore, as for the this appears to be a "data processing" method, therefore, the data or information such as "*wherein said equipment descriptive information comprises an identification of equipment typerack of equipment*" have been determined to be non-functional descriptive material (NFD), thus having no patentable weight and does not need to be taught by the prior art. Nonfunctional descriptive material can not render nonobvious an invention that would have other wise been obvious. In re Gulack, 703 F. 2d 1381, 1385, 217 USPQ 401, 40-4 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability. See MPEP 2106.01.

As for claim 18, O'KANE, JR. ET AL disclose further comprising:

a) a rack equipment description retrieval module for controlling automatic retrieval of rack equipment description information {see figure 1, at least database 32, which stores telecommunication equipment in racks and data relevant to the racks}

b) a rack equipment management plan module for directing establishment of a rack equipment management plan {see figure 1, 6A, 11, and 13; col. 5, lines 35-59 "design and modify and develop telecommunication site};

c) a rack equipment correlation module for providing correlation instructions to a correlation component {see figures 1, 2, 6A, 10-11}

d) an instruction saving module for directing rack equipment description information and the rack equipment management plan information saving operations {see figure 1}

Note: the system claims must be structurally distinguishable from the prior art. While features of an apparatus claim may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See MPEP 2114. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Circ. 1990). Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987).

Also, in an apparatus claim, i.e. the phrase "for controlling...; for directing....; for providing...." in claim 18 is considered as intended use limitation for the system/device "module", and thus having no patentable weight.

As for claim 19, which discloses the rack equipment management plan module facilitates determination of rack equipment management objectives, this is taught in O'KANE, JR. ET AL {see figures 6A, and 13}

As for claim 20, which discloses the rack equipment management information coordination, is utilized to support a variety of rack equipment management objectives, this is taught in O'KANE, JR. ET AL {see figures 1, 6A and 13}.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'KANE, JR. ET AL. (US 6,366,919).

As for independent claim 1, O'KANE, JR. ET AL. disclose a computer implemented rack equipment management information coordination method comprising:

a) designing or arrangement or configuration of a rack equipment management plan using a computer, the rack equipment management plan includes information data such as equipment management and usage policies and establishes an association between a rack equipment performance action and a trigger

{see col. 2, lines 33-39 discloses the *creating designs of racks using a performance characteristics of the telecom equipments*; at least figures 3, 5, 7, 12-13 and at least col. 5, lines 47-59; col. 7, lines 64-67, col. 8, lines 1-6; and lines 1-2; col. 9, lines 1-16, and lines 38-67 wherein O'KANE ET AL discloses the arrangement of a rack equipment management plan, and usage policies for example:, a determination as to what the environmental factors *applicable to the site is made such as available cooling power, humidity level*, the design of rack to determine when and if a particular design exceeds acceptable parameter values such as power, cooling, dimensions and positional requirements (interpreted to be rack equipment plan) and col. 5, lines 47-59 discloses *the total power demanded by all of the telecom components in a particular rack does not exceed a certain portion*, such as 80% of the power supply in the rack (interpreted to be usage policies) ; and col. 4, lines 1-9 discloses the telecom equipment power requirements, heating loads or power consumed telecom ports, performance capabilities, form factors needed to mount the telecom equipment in racks;

and wherein said rack equipment management plan is a plan for managing rack equipment operating characteristic while said rack equipment is in operation;

{see figures 3-5, 7, 10-11}

b) automatically detecting/monitoring and retrieving using computer, rack equipment description information from at least one component comprising said rack equipment, wherein said rack equipment descriptive information comprises an identification of equipment type of said at least one component;

{see figures 1, 5, 7, 11-13 col. 4, lines 4-9; col. 7, lines 64-67; col. 8, lines 1-35 wherein O'KANE, JR. ET AL discloses automatically *monitored* the telecommunication equipment e.g. the rack servers 94.1-94.4 which comprise communication equipment 100 such as power supply, power distribution panel, identification what racks are present at the sites and identification of equipment installed at the sites as well as in which racks; and also see figure 13 for the rack equipment description; and the central computer 22 is automatically determining and monitoring the equipment 100 in the racks 94 exceeds the maximum allowable power load on the power supplies and back up batteries 106 {see col. 1, lines 25-46; figures 1 and 5; col. 6, lines 15-30, lines 40-53}.

{see col. 5, lines 34-46 wherein O'KANE, JR. ET AL discloses retrieving data or telecom component information from the databases such as 26 and 68. The telecom component information (equipment description) such as listing of the particular telecom components such as switches, optical fiber, connectors, power supplies);

c) storing with said computer, aid rack equipment description information and said rack equipment management plan

{see figures 1,abstract; col. 2, lines 14-54; col. 4, lines 4-17; col. 7, lines 64-67; col. 8, lines 1-35 discloses the databases for storing the rack of telecommunication equipment information in the database, performance data for particular telecom equipment may be stored}.

O'KANE, JR. ET AL discloses the claimed above except for the feature "wherein at least a portion of the information/data such as equipment management plan and

usage policies are automatically received from a customer database" (part of step a). However, O'KANE, JR. ET AL disclose a computer center is connected to various client database, the client/customer access to various database through the network to determine or verify the actual installations, various activities on the equipment and system, updated and maintained current} {see at least figures 1-2, 6A (site information by client 26), abstract, col. 2, lines 43-54, lines 65-67, col. 3, lines 1-2; col. 5, lines 7-13}.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the system of O'KANE, JR. ET AL to including receiving information from the customer database in order to provide a sufficient telecommunication site management system for tracking and updating the status of the equipments at remote sites by receiving equipment information from the customer through the network.

Furthermore, this appears to be a "data processing" method, therefore, the data or information such as *"equipment management and usage policies, rack equipment performance action and a trigger event, an identification of equipment"* have been determined to be non-functional descriptive material (NFDM), thus having no patentable weight and does not need to be taught by the prior art. Nonfunctional descriptive material can not render nonobvious an invention that would have other wise been obvious. In re Gulack, 703 F. 2d 1381, 1385, 217 USPQ 401, 40-4 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability. See MPEP 2106.01.

As for claims 2-3, which discloses the retrieving performance level setting from the rack equipment, e.g. wattage setting; this is fairly taught in O'KANE, JR. ET AL, see figures 11-13.

As for claims 4-5, which discloses the information or guidelines e.g. power and thermal budge guidelines about the rack equipment management plan, this is fairly taught in O'KANE, JR. ET AL, see at least col. 5, lines 48-59.

As for claim 6, which discloses interfacing with a service agreement application for formulating the rack equipment plan, this is fairly taught in O'KANE, JR. ET AL {see figures 3, 6 col. 14-27 e.g. CAD drawing"}

As for claim 7, which discloses integrating said rack equipment description information with said rack equipment management plan, this is fairly taught in O'KANE, JR. ET AL, figures 1, 5, 6A and 7.

6. Claims 8-16, 17-20 are rejected (2nd time) under 35 U.S.C. 103(a) as being unpatentable over O'KANE, JR. ET AL. (US 6,366,919) in view of Applicant Admitted Prior Art (**AAPA**) {pars. 004-0007} or vice versa.

As for independent claim 8, the teaching of O' KANE, JR. ET AL is cited above. AAPA is cited to show an equipment management information system wherein the equipment is about rack equipment. It would have been obvious to modify the system of O' KANE, JR. ET AL by using other equipment type such as rack equipment as taught by AAPA as mere applying the same information management to other similar equipment.

Alternatively, the teachings of AAPA is cited above. It would have been obvious to modify the manual equipment management information system of AAPA by using the computer automatic equipment management information system of O' KANE, JR. ET AL for the benefits of "*managingwhich enable remote maintenance and reconfiguring of existing equipmentdesired is a system which tracks and updates the content, arrangement, configuration, ...maintenance.*" {see col. 1, lines 39-45}.

As for dep. claims 9-16, they are rejected for the same reasons set forth above to avoid duplicate rejections.

As for independent claim 17, which has similar scope to independent system claim 8 above, it's rejected for the same reason set forth in the rejection of claim 8 above.

As for dep. claims 18-20, they are rejected for the same reasons set forth above to avoid duplicate rejections.

Response to Arguments

Applicant's arguments filed on 10/05/09 have been fully considered but they are not persuasive.

1) On page 14 of the remark which discusses about the Non-Functional Descriptive Material as for claim 8 and 17. Applicant states "the Rejection has improperly indicated that "the data or information such as wherein said equipment descriptive information comprises an identification of equipment type....rack of equipment" because no analysis was provided other than an indication that each of

claims 8 and 17 appeared to be a data processing method" is noted. However, Claim 8 and 17 appear to be a system claims which must be structurally distinguishable from the prior art. The system claims cover what a device is, not what a device does. *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Circ. 1990). Manner of operating the device or elements of the device.

Therefore, the "the information/data" about *"equipment description information, identification equipment type, equipment management plan information,"* have been determined to be non-functional descriptive material (NFDM) because this information is just stored in the repository/database or storage. Nonfunctional descriptive material can not render nonobvious an invention that would have otherwise been obvious. In *re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 40-4 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability. See MPEP 2106.01.

2) On page 17 of the remark, Applicant states that O'KANE does not teach or suggest, either expressly or inherently, "a repository management component that control automatic retrieval of said equipment description information and said management plan information such that said identification of equipment type is automatically retrieved by said repository management component from said at least one component of said rack of equipment" as recited in the system claim 8 is noted. However, claim 8 appears to be a system claims which must be structurally distinguishable from the prior art. While features of an apparatus claim may be recited either structurally or functionally, claims directed to an apparatus must be distinguished

from the prior art in terms of structure rather than function. See MPEP 2114. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997).

Apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Circ. 1990). Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987).

Thus the phrase above in claim 8 is considered as intended use limitation for the system/device "repository/database and component", and thus having no patentable weight.

3) On pages 19 of the remark, Applicant states that O'KANE does not teach or teach or suggest, either expressly or inherently, "a means for controlling automatic retrieval of rack equipment related information from at least one component ... wherein said rack equipment related information comprises rack equipment description information regarding at least said at least one component and includes an identification of equipment type of said at least one component of a rack of equipment" is noted as is recited in the independent Claim 17. However, O'KANE discloses in see col. 5, lines 34-46 about the "retrieving data or telecom component information from the databases such as 26 and 68. The telecom component information (equipment description) such as listing of the particular telecom components such as switches, optical fiber, connectors, power supplies";

{figures 1, 5, 7, 11-13 col. 4, lines 4-9; col. 7, lines 64-67; col. 8, lines 1-35 where in O'KANE discloses automatically monitored the telecommunication equipment e.g. the rack servers 94.1-94.4 which comprise communication equipment 100 such as power supply, power distribution panel, identification what racks are present at the sites and identification of equipment installed at the sites as well as in which racks

and also see figure 13 for the rack equipment description; and the central computer 22 is automatically determining and monitoring the equipment 100 in the racks 94 exceeds the maximum allowable power load on the power supplies and back up batteries 106 {see col. 1, lines 25-46; figures 1 and 5; col. 6, lines 15-30, lines 40-53}.

Therefore, O'KANE teaches the claim limitation in the independent claim 17 above.

4) On page 22 of the remark, Applicant states that O'Kane does not teach or suggest "automatically detecting and retrieving, with said computer, rack equipment description information from at least one component comprising said rack equipment, wherein said rack equipment description information comprises an identification of equipment type of said at least one component," as is recited in the method claim 1. Applicant further indicates that O'Kane may describe automatically determining and monitoring a power load on a rack (see col. 6, lines 40-53 of O'Kane). Applicants submit this is very different than, and does not teach or suggest the claim 1 recited above. However, this is not persuasive. As for the limitation "automatically detecting and retrieving the rack equipment description information", OKANE discloses

{on figures 1, 5, 7, 11-13 col. 4, lines 4-9; col. 7, lines 64-67; col. 8, lines 1-35 automatically monitored the telecommunication equipment e.g. the rack servers 94.1-94.4 which comprise communication equipment 100 such as power supply, power distribution panel, identification what racks are present at the sites and identification of equipment installed at the sites as well as in which racks; and also see figure 13 for the rack equipment description};

and {see col. 1, lines 25-46; figures 1 and 5; col. 6, lines 15-30, lines 40-53 wherein O'KANE discloses the central computer 22 is automatically determining and monitoring the equipment 100 in the racks 94 exceeds the maximum allowable power load on the power supplies and back up batteries 106};

{see col. 5, lines 34-46 teaches retrieving data or telecom component information from the databases such as 26 and 68. The telecom component information (equipment description) such as listing of the particular telecom components such as switches, optical fiber, connectors, power supplies};

Therefore, OKANE discloses the claim language as recited in the independent claim 1 above.

5) As for the arguments on pages 8-13 about the 101 rejection regarding claims 8-16; 17-20; and the 112 rejection on claim 17 have been fully considered. These rejections have been withdrawn.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy-Vi Nguyen whose telephone number is 571-270-1614. The examiner can normally be reached on Monday through Thursday from 8:30 A.M to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. N./

Examiner, Art Unit 3689

/Tan Dean D. Nguyen/
Primary Examiner, Art Unit 3689
1/26/10

